

OGG HAS REVIEWED

Appendix A

Statutory Basis of E.O. 10450

1. Executive Order 10450, 27 April 1953, extends the provisions of the Act of 26 August 1950 to "all other departments and agencies of the Government," in addition to those agencies specifically named in the Act. This Executive Order cites as its statutory authority the following:

R.S. 1753 (5 USC 631)
Civil Service Act of 1883 (5 USC 632 et seq.)
Section 9A of the Act of 2 August 1939 (5 USC 118(j))
Act of 26 August 1950 (5 USC 22-1 et seq.)

2. 5 USC 118(j) was repealed by the Act of 9 August 1955 (69 Stat. 25). It makes membership in an "overthrow by force" organization grounds for removal of civilian employees.

3. 5 USC 631 authorizes the President "to prescribe such regulations for the admission of persons into the Civil Service of the United States as may best promote the efficiency thereof."

4. 5 USC 632 et seq. are concerned primarily with the responsibilities and authorities of the Civil Service Commission. Section 652 is entitled "Removal Without Pay From Classified Civil Service" and provides, inter alia: "No person in the classified Civil Service of the United States shall be removed or suspended without pay therefrom except for such cause as will promote the efficiency of such service and for reasons given in writing."

5. 5 USC 22-1 provides: "Notwithstanding the provisions of section 652 of this Title, or the provisions of any other law, the Secretary of State...(and other named departments)...may, in his absolute discretion and when deemed necessary in the interest of national security, suspend, without pay, any civilian officer or employee of the Department of State...(etc.)..."

It further provides: "The agency head concerned may, following such investigation and review as he deems necessary, terminate the employment of such suspended civilian officer or employee whenever he

shall determine such termination necessary or advisable in the interest of the national security of the United States, and such determination by the agency head concerned shall be conclusive and final."

A further relevant provision is the following: "Provided further, that the termination of employment herein provided shall not affect the right of such officer or employee to seek or accept employment in any other department or agency of the Government."

6. The last cited provision seems in fact invalidated by the provisions of Executive Order 10450, which extends the coverage of 5 USC 22-1 to all departments and agencies. The Executive Order recites that Government employment is a privilege and that the employment of any person must be "clearly consistent with the interests of the national security." The Executive Order recites the desideratum that "all persons seeking the privilege of employment or privileged to be employed in the departments and agencies of the Government be adjudged by mutually consistent and no less than minimum standards and procedures among the departments and agencies." The Civil Service Commission is given the responsibility for establishing consistency among the procedures of the various departments and agencies and for balancing the national security against the equitable rights of individual employees. "All departments and agencies of the Government are directed to cooperate with the Civil Service Commission to facilitate the accomplishment of the responsibilities assigned to it."

7. The case of Cole v. Young (125 F. Supp. 284), construing section 22-1, concluded that this section: "Constitutes a limitation of the Civil Service Act, section 652 of this Title, and the Veterans' Preference Act, sections 851, 861, 863 of this Title and withdraws protection of those sections or any other Congressional act from any officer or employee whose removal is deemed necessary in interest of national security and supersedes sections 851, 861, 863 of this Title, pro tanto insofar as the two are inconsistent." The Supreme Court reversal of this case did not reverse this particular holding, but affirms it.

*Security &
ERB*

15 June 1956

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MEMORANDUM FOR [REDACTED]

1. You are aware that the Supreme Court last week in the case of *Cole v. U. S.* ruled that nonsensitive positions were not subject to the provisions of P. L. 733 and E. O. 10450. [REDACTED]

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[REDACTED] However, we should review the decision to determine if there is any indirect philosophy in the opinion which would have some bearing on ^{the} CIA ~~out of its~~ authority for cases other than true security cases.

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2. In the meantime, General Cabell has called asking whether or not the decision has any bearing. I indicated that our curbstome view was that there would be no direct relationship although there may be some food for thought. He requested that he be advised of what the results of our study of the opinion shows. Will you please take this one on.

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[REDACTED]
Deputy General Counsel

MEMORANDUM FOR: General Counsel

SUBJECT : Implications of Cole v. Young (U.S. Supreme Court,
11 June 1956)


1. Prior to the recent Supreme Court decision in Cole v. Young, terminations on the basis of "loyalty" charges as well as those on the basis of "security" charges ^{were} considered as falling ^{generally} within the purview of EO 10450, ^{to} The preamble ~~of~~ which recites:

"WHEREAS the interests of the national security require that all persons privileged to be employed in the departments and agencies of the Government, shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States..."

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~~Prior to 10450, "loyalty" cases were generally brought under the Civil Service Act or the Veteran's Preference Act (depending upon whether the employee charged was or was not a veteran) and security cases have been brought under EO 9835. EO 10450, and Public Law 733, upon which it was based, seem to have been construed as exerting a superseding effect in the security and loyalty fields.~~

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8. ~~9.~~ The applicability of the several authorities to the several possible grounds of termination prior to the decision in Cole v. Young is indicated in the chart below:

Authority ^C SA/VPA

10450

102(c)

Charge

Security	X	X
Loyalty	X	X
Suitability	X	X (?)

6. ~~A~~ Cole v. Young ruled:

"It follows that an employee can be dismissed 'in the interest of the national security' under the act only if he occupies a 'sensitive' position, and thus that a condition precedent to the exercise of the dismissal authority is a determination by the agency head that the position occupied is one affected with the 'national security'."

The affect of this was to limit the applicability of 10450 in "loyalty" cases to those employees occupying "sensitive" positions.

7. ~~A~~ The Court made a further statement, however, as dictum in the course of answering the Government's contention that "national security" as used in Public Law 733 and EO 10450 was equivalent to "general welfare", saying:

"For why could it not be said that national security in that sense requires not merely loyal and trustworthy employees, but also those that are industrious and efficient? The relationship of the job to the national security being the same, its demonstrated inadequate performance because of inefficiency or incompetence would seem to present a surer threat to national security in the sense of the general welfare, than a mere doubt as to the employee's loyalty."

This represents, so far as I know, the first judicial recognition that inadequate performance in a sensitive position is as dangerous to the national security as would be disloyalty or insecurity on the part of the employee.

FOIAb5

8. ~~B~~ The applicability of the several authorities to the several possible grounds of termination after the decision in Cole v. Young is indicated in the chart below:

<u>Charge</u>			
Security	non-sensitive	X sensitive	X
Loyalty	X	X	X
Suitability	X		X

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2) EO 10450 replaced EO 9835, which was concerned solely with loyalty cases. Prior to EO 9835, loyalty cases were generally brought under the Civil Service Act or the Veteran's Preference Act (depending upon whether the employee charged was or was not a veteran).

3) (EO 9835, in fact, cites as authority the Civil Service Act and Section 9a of Hatch Act.) EO 10450, and Public Law 733 upon which it was based seemed to have been construed as superseding the Civil Service and Veteran's Preference Acts in the security and loyalty fields.

102(c)

originally

CSA/VPA

X

suitability
 ("good of the Service")
 "loyalty"
 "security"

X

9835 (21 March 1947)

CSA/VPA

9835

X

suitability

X

X

"loyalty"

X

X

"security"

?

?

10450 (1953)

CSA/VPA

10450

X

suitability

X

X

"loyalty"

X

"security"

X

Cole v. Young

CSA/VPA

10450

X (sensitive)

suitability

X

X

"loyalty"

non-sensitive

sensitive

X

"security"

X

X

X

E.O. 9300, 5 Feb 43 :